

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-174839**DATE:** March 20, 1984**MATTER OF:**

Navy Industrial Fund: Obligations in
connection with long-term vessel charters

DIGEST:

Provision in Supplemental Appropriations Act, 1983, specifies that termination liability of Navy's TAKX and T-5 ship-leasing programs should be recorded as obligation in the Navy's current operations and maintenance appropriation, but only in an amount equal to 10 percent of outstanding gross termination liability. GAO agrees with Navy position that the enactment constitutes contract authority to cover remaining 90 percent of TAKX and T-5 termination liability.

The Comptroller of the Navy has requested our concurrence in his interpretation of a provision included in the Supplemental Appropriations Act, 1983, concerning the recording of obligations for termination liability for the TAKX and T-5 ship-leasing programs. As discussed below, we agree with his view that the provision constitutes contract authority to cover all but 10 percent of the termination liability arising from the TAKX and T-5 ship charters. Consequently, we agree that, upon charter commencement, TAKX and T-5 obligations should be recorded against the Navy Industrial Fund in an amount equal to the charter costs of each vessel during the 5-year charter period, as well as against the Navy's operation and maintenance (O&M) appropriation for the then-current fiscal year, in an amount equivalent to 10 percent of the gross termination costs that would be due for failure to renew the charters after the initial 5-year contract period.

In our decision 62 Comp. Gen. 143 (1983) we concluded that termination expenses in the TAKX charter agreements constituted one of two alternate obligations for which the Navy would be contractually liable at the end of the first 5-year lease period (the other obligation being the cost of continuing the charter agreement for a second 5-year lease period, plus costs of continuation or termination after 10 years). In order that the Navy's recorded obligation fully reflect this continuation of liability after the initial 5-year lease period, we determined that the Navy should record an obligation to cover termination costs as the less expensive of the two alternate obligations. 62 Comp. Gen. at 147. We further noted that the obligational availability of the Navy Industrial Fund appeared to be insufficient to cover both base-period lease costs and

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termination expenses, and suggested that the Navy, prior to accepting delivery of all 13 TAKX vessels, seek to increase its funding authority through new appropriations, transfers, or enactment by the Congress of "contract authority" for the program. Id.

As a result of our decision, the Navy sought assistance from the Congress, which enacted the following provision as a part of the Supplemental Appropriations Act, 1983:

"Obligations incurred or to be incurred hereafter for termination liability in connection with the TAKX and T-5 programs, for which the Navy has already entered into agreements to charter (including conversion or construction related to such agreements or charters) shall, so long as the Government remains liable for termination costs, be considered as obligations in the current Operation and Maintenance, Navy, appropriation account, to be held in reserve in the event such termination liability is incurred, for the purposes of title 31, United States Code, in an amount equal to 10 percent of the outstanding gross termination liability." Pub. L. No. 98-63, tit. I, ch. III, 97 Stat. 301, 308 (1983).

The Comptroller of the Navy has concluded, based on the language and legislative history of this provision, that it is a statutory grant of contract authority for all but 10 percent of TAKX and T-5 termination liability. We agree.

The provision in question requires that any obligation for termination liability in connection with the TAKX and T-5 ship charter programs be recorded against the current O&M appropriation for the Navy, in an amount equal to 10 percent of the outstanding gross termination liability. Because our previous decision required that the Navy include termination liability under the TAKX contracts as part of its entire contractual obligation under the program, we believe that it is clear that the Congress intended the provision in the 1983 Supplemental

Appropriations Act to constitute permanent^{1/} "contract authority" for 90 percent of that portion of the TAKX and T-5 contractual obligation attributable to termination liability. By reducing the reserve required to be obligated for the potential termination liability below 100 percent, the provision authorizes the remaining unfunded liability. In effect, Congress has approved the existing agreements and provided the Navy with the authority to proceed with the charter agreements in the absence of an appropriation covering the total potential termination liability required by our decision. Id. In addition, the legislative history of the provision shows that its enactment was intended to provide relief to the Navy from the perceived harshness of our decision 62 Comp. Gen. 143 (1983). For example, the House report on the H.R. 3069, later enacted as the 1983 Supplemental Appropriations Act, had this to say about the provision here under consideration:

"The Comptroller General recently ruled that, in the absence of specific Congressional action, the Navy must obligate sufficient funding to cover the maximum potential termination liabilities for leasing of T-AKX and T-5 ships. As a result, the Navy has been required to post obligations of \$1.4 billion even though no appropriations are likely to ever be needed. The Committee believes that the prospect for completion of the T-AKX and T-5 programs is quite good. On an actuarial basis, the probability of the Navy ever incurring any costs due to program termination is quite low. Nevertheless, the Committee believes that the Navy should maintain a reserve of 10 percent of the possible total termination liabilities to cover the unlikely prospect that either a T-AKX or T-5 ship is terminated. A general provision clarifying this requirement is included in the bill." H.R. Rep. No. 207, 98th Cong., 1st Sess. 33 (1983).

In conclusion, it is our view that the Navy may accept delivery of the TAKX and T-5 vessels, if those vessels are

^{1/} By "permanent", we mean with respect to those TAKX and T-5 vessels for which agreements to charter have been signed. The use of the term "hereafter" indicates that this provision was not intended to be simply a 1-year exemption from the requirement to record full termination obligations, but is to last throughout the lives of the existing agreements. See 36 Comp. Gen. 434, 436 (1956).

otherwise in conformance with the applicable agreements to charter, and in doing so record obligations against the Navy Industrial Fund to cover the costs of the initial 5-year lease period, and against the Navy's O&M appropriation to cover 10 percent of gross termination liability under these contracts.

for Milton J. Fowler
Comptroller General
of the United States